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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.21, 73.26 and)
73.37 of the Commission's Rules to)
Provide for Facilities Changes by Stations)
Operating in the Expanded AM Band)
(1605-1705 kHz))

MB Docket No. _____

RM No. 11136

To: Audio Division
Media Bureau

COMMENTS IN SUPPORT OF
PETITION FOR RULEMAKING

Waitt Omaha, Inc., licensee of expanded AM band Station KOZN (Fac. ID 87182), Bellevue, Nebraska ("Waitt"), by its attorney and pursuant to the Commission's Public Notice, Report No. 2686, released January 5, 2005, hereby submits these Comments in support of the Petition for Rulemaking filed October 22, 2004 by InterMart Broadcasting of Georgia, Inc., Rama Communications and Multicultural Radio Broadcasting, Inc. (the "Petition")

The Petition asks the Commission to amend Sections 73.21(a)(2) and 73.26 (a)-(c) and to add a Note 5 to 73.37 of its rules, designating qualifying expanded band facilities as AM Class B stations and permitting them to increase power and to employ directional antennas, provided they do not cause new or increased interference to other stations.

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Waitt submits that the Petition serves the public interest. Annexed hereto is the Engineering Statement of Bernard R. Segal, P.E., which confirms that the rulemaking proposal meets all applicable FCC technical standards.

After more than a decade, the expanded band migration plan contemplated in the Commission's Report and Order in *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273, 69 RR 2d 1395 (1991) (the "*Expanded Band Order*"), has now been successfully implemented. As the Petition points out, some 65 stations -- including KOZN -- are currently operating in the expanded band, limited to daytime power of 10 kW and nighttime power of 1 kW. Listenership in the expanded band is increasing as, over time, people become increasingly accustomed to tuning to newer frequencies. Interference within the lower portion of the AM band has been lessened as intended. The Commission's creative and innovative migration plan has borne fruit. It is now time to make more efficient use of expanded band spectrum by permitting the stations which occupy it to improve their facilities -- provided they cause no harm in doing so.

In the *Expanded Band Order*, at 69 RR 2d 1409 ¶ 71, the Commission expressly recognized the desirability of operational flexibility in amending the AM rules. Flexibility, it noted, "requires a balance between our overall goal of reducing interference in the AM service and the understandable desire of broadcasters to improve their stations." The end result, the Commission predicted, would be a meaningful improvement of AM broadcasting, *id.*, at 69 RR 2d 1413 ¶ 99. The proposals contained in the Petition help to make the Commission's prediction a reality.

Improvements have certainly resulted from populating the 1605-1705 kHz band, but expanded band AMs remain second-best to FM and numerous higher-power AMs. Now that the expanded band is substantially occupied it is appropriate for the Commission to consider the benefits of the service improvements proposed in the Petition. Always presuming that no new or increased interference results, expanded band stations should be permitted to enhance their facilities, by directionalizing where justified, in order to compete more effectively with other broadcasters. Designating selected expanded band facilities as Class B's would prove beneficial, without causing additional interference or other harm to existing stations.

As the annexed Engineering Statement points out, the proposed rule changes are fully in accordance with rules applicable to the lower AM band between 540 and 1600 kHz. Thus, grant of the Petition would merely help assure that qualifying expanded band AMs have the same flexibility, where possible, for increasing their coverage and thereby competing more equitably with FM and higher-power AM stations, without creating destructive interference or damaging the integrity of the Commission's AM scheme, and without the necessity of submitting time-consuming waiver requests.

The Engineering Statement further establishes that, since expanded band AMs have inherently poorer groundwave signal propagation properties than non-expanded band AMs, affording stations such as KOZN Class B status will allow them to compete on a more level, but still not entirely equal, playing field with lower band AM stations.

Waitt is well aware that avoiding high levels of interference was essential to the Commission's intent in permitting expanded band migration. The proposed new rules do not run counter to that intention. The Engineering Statement affirms that, under the proposed amended rules, stations which qualify as expanded band Class B facilities will only be able to increase service if they do not cause a reduction in service to existing stations because of interference. The Statement concludes that adoption of the proposed new rules "has the earmarks of a win-win situation."¹

In summary, granting the proposed rulemaking and amending the rules as specified therein would provide the opportunity for significant improvement to many currently struggling AM stations without causing a shred of harm to anyone. Favorable action on the Petition would result in a more efficient use of the expanded band and improved AM service. This "win-win" proposal plainly serves the public interest and thus warrants Commission consideration.

¹ The Engineering Statement preliminarily indicates that KOZN, like other similarly situated stations, could benefit from the rule revision by increasing its nondirectional daytime power, without detriment to the operation of any other facility.

For all these reasons, Waitt urges the Commission to amend its rules as proposed in the Petition.

Respectfully submitted,

WAITT OMAHA, LLC

By:



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Its Attorney

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Attachment
February 4, 2005

ENGINEERING STATEMENT
RE: PETITION FOR RULEMAKING
WAITT OMAHA, LLC
STATION KOZN, BELLEVUE, NEBRASKA

Waitt Omaha, LLC (Waitt) is the licensee of expanded AM band Station KOZN, Bellevue, Nebraska. The station operates on 1620 kHz with daytime power of 10 kW and nighttime power of 1 kW. A non-directional antenna is employed. The facilities employed are the maxima presently permitted by the Rules for an expanded band station.

The instant Engineering Statement supports a response to the FCC request for comments regarding the Petition for Rulemaking by InterMart Broadcasters of Georgia, Rama Communications, and Multicultural Radio Broadcasting, Inc. to change Sections 73.21(a)(2); 73.26(a), (b), and (c); and to add a Note 5 to Section 73.37 of the FCC Rules. The changes, if adopted, would permit stations like KOZN to seek facility improvements, up to a maximum of 50 kW with the use of a directional antenna, if needed, to avoid creating new, or increased interference to any station.

The proposed rule changes are consistent with the FCC's rules governing the operations of stations in the portion of the AM Band between 540 kHz and 1600 kHz, and would extend to stations that operate in the expanded portion of the Band, the same flexibility for increasing coverage, without creating new interference, as is permitted for stations in the lower portion of the AM Band.

Adoption of the proposed rule changes will afford opportunities for some licensees in the 1610 kHz-1700 kHz frequency range to expand their station's coverage, and so, improve their competitive marketplace stance given the inherently poorer groundwave signal propagation properties that prevail in the frequency range from 1610 kHz to 1700 kHz compared with those at lower AM frequencies. For example, for a soil conductivity of 2 milliSiemens per meter (mS/m), a principal community signal strength

Engineering Statement
Re: Petition for Rulemaking
Waitt Omaha, LLC

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level of 5 mV/m will occur at a nominal distance of 19 kilometers for a 500 watt station on 550 kHz; a 5 kW station on 940 kHz; and a 50 kW station on 1650 kHz. The foregoing is based on a radiator that produces an unattenuated field strength of 305 mV/m at 1 kilometer for a power input of 1 kW.

The avoidance of high levels of interference was basic to the initial purpose of the Rules that were adopted for the expanded AM Band. The rule modifications that are proposed will continue to preserve the low levels of interference that were intended. Thus, the public interest will be served by adoption of the proposed rule changes. Qualifying stations will be able to increase service in their local markets and surrounding areas, while not reducing service elsewhere because of interference being created.

Preliminary studies indicate that Station KOZN, and others like it, could benefit if the Rules are modified, as proposed. In the instance of KOZN, a non-directional, daytime, power increase appears to be the most likely avenue for providing improved service. A power increase would afford service to a greater number of persons than at present, while yet not increasing interference to any other station. Adoption of the proposed rule revisions has the earmarks of a win-win situation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 3, 2005.

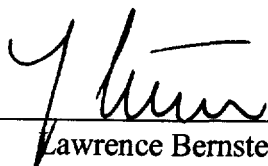

Bernard R. Segal, P. E.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 4th day of February, 2005, served copies of the foregoing "Comments in Support of Petition for Rulemaking" upon the following persons via first class United States Mail, postage prepaid:

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